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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,569	03/30/2004	Mark T. Mercer	10796.6803	3665
44538	7590	08/25/2005	EXAMINER	
DANIEL S. POLLEY, P.A. 1215 EAST BROWARD BOULEVARD FORT LAUDERDALE, FL 33301			SWINEHART, EDWIN L	
			ART UNIT	PAPER NUMBER
			3617	

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/812,569

Applicant(s)

MERCER, MARK T.

Examiner

Ed Swinehart

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 12-24 is/are rejected.
- 7) ☒ Claim(s) 9-11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_

### DETAILED ACTION

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1,2,4,17,18,20 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Cogliano.

Cogliano discloses the claimed invention, including an elongate tube, a weight disposed at a bottom end thereof, floatable members **5** and **9** disposed intermediate the ends, and a loop **6** disposed on the upper end thereof.

Re the preamble and “when...”, such are considered to be a statements of intended use, carrying little/no weight in the claims as presented.

3. Claims 1,3,4,8,13, 17,20,21 are rejected under 35 U.S.C. 102(b) as being anticipated by Rudelick.

Rudelick teaches an elongated tube **9,10** with a weight at a lower end, and floatation foam **20** at an intermediate position.

Re “cord member”, the loop **7** is for attachment of a mooring line (cord), and therefore a cord is inherent. Element **29** forms a plug, for sealing the upper end of the tube.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cogliano.

Cogliano fails to mention the construction of the weight from steel, however, construction of a weight from any metal having a density much greater than water is considered to have been old and well known in the art, and to fashion the weight of Cogliano from steel would have been an obvious design consideration to the ordinary routineer working in the art at the time of the invention, providing no unexpected results.

6. Claims 2,5,12,14 and 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rudelick.

Construction of the weight from steel is treated as above.

Re the claimed color, the painting of buoys from high visibility colors is notoriously old and well known in the art, and provision of same would have been obvious to the ordinary routineer working in the art at the time of the invention.

7. Claims 7,16 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rudelick in view of Walker.

Rudelick fails to teach a reflective strip, as is considered to have been old and well known in the art.

Walker teaches same.

It would have been obvious to one of ordinary skill in the art at the time of the invention to provide Rudelick with reflective strips as taught by Walker.

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Such a combination would have been desirable at the time of the invention so as to provide ease in identification.

8. Claims 6, 15 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rudelick in view of Scheurer.

Rudelick fails to disclose a "rattle".

Scheurer teaches weight made of lead shot, which will inherently rattle.

It would have been obvious to one of ordinary skill in the art at the time of the invention to employ lead shot as the weight of Rudelick as taught by Scheurer.

Such a combination would have been desirable at the time of the invention so as to provide ease in assembly.

9. Claims 9-11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

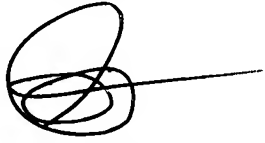
McIntyre, Nichols, Adams, Havlick, and Hill teach buoys.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ed Swinehart whose telephone number is 571-272-6688. The examiner can normally be reached on Monday through Thursday 6:30 am to 2:00 pm..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ed Swinehart  
Primary Examiner  
Art Unit 3617